



**Department of
Transportation**

I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 2

DESIGN-BUILD PROJECT

PIN 3501.91, Contract D900056

Request for Proposals

Addendum #2

December 16, 2022

Modification to the Request for Proposals
I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 2
Design-Build Project
PIN 3501.91, Contract D900056

Note to Proposers

Differences between the deleted pages and the revised pages have been identified as follows:

- Brackets have been inserted on the left-hand margin of the pages to indicate where changes have been made to the documents; and
- Text additions have been shown in underlined red font and text deletions have been shown in crossed out red font.

General Instructions

Delete Pages A-5 and A-6 of the Instructions to Proposers, Appendix A, Project Information, and substitute the attached revised Pages A-5 and A-6.

Delete Form SA of the Instructions to Proposers, Appendix E, Forms, and substitute the attached revised Form SA.

No other provision of the solicitation is otherwise changed or modified.

provisions of an approved PLA shall be superseded by the PLA to the greatest extent permitted by federal or state law.

A4.0 REFERENCE DOCUMENTS

Reference Documents include but are not limited to the following Documents:

- A. Record Plans for the project area
- B. Geotechnical Data Report
- C. CADD Files
- D. Final Design Report/Final Environmental Impact Statement
- E. Record of Decision
- F. Bridge Inspection Reports

Reference Documents are located at the following Web site address:

<https://www.dot.ny.gov/main/business-center/designbuildproject56>

A5.0 PROCUREMENT SCHEDULE

A5.1 ANTICIPATED PROCUREMENT SCHEDULE

The Department anticipates the following procurement schedule for the Contract:

Activity	Date
Draft RFP Informational Meeting	Week of October 24 ¹⁷ , 2022
Final RFP to Shortlisted Firms	November 4, 2022
Date Proposers may start submitting ATCs for review	November 4, 2022
Proposal period one-on-one meetings with all Proposers.	November 14 <u>December 13</u> , 2022 — January 18 <u>February 17</u> , 2023
Final date for Proposers to submit new ATC's for review	January 4 <u>February 1</u> , 2023
Final date for requests for changes to Proposer's organization and personnel	January 4 <u>February 1</u> , 2023
Final date for Proposers to submit revised ATCs for final review	January 20 <u>February 17</u> , 2023
Final date for Department's responses to new ATCs submitted for review	January 13 <u>February 10</u> , 2023
Final date for Department's responses to revised ATCs submitted for review	January 27 <u>February 24</u> , 2023
Final date for receipt of Proposer questions	January 23 <u>February 20</u> , 2023
Final date for Proposers to respond to conditional approval of ATC's	January 27 <u>February 24</u> , 2023
Issue Date for Final Addendum and/or answers to Proposer questions	January 27 <u>February 24</u> , 2023

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Proposal Due	February 7 <u>March 10</u> , 2023
Post Proposal meetings	<u>Week of March 20, 2023</u> TBD
Selection of Best Value	March <u>April</u> 7, 2023
Limited Negotiations (if required)	TBD
Contract Award	May 7 <u>June 8</u> , 2023
Notice to Proceed	May 7 <u>June 8</u> , 2023

This is a tentative schedule. All dates set forth in the preceding table and in this RFP are subject to change, in the Department's sole discretion. To the extent that dates are changed, the Department shall notify the Proposers by Addendum.

A5.2 PROPOSAL DUE DATE

The completed Proposal shall be delivered to the Department's Designated Representative at the address specified in Section A8.0, no later than 12:00 P.M. (midday) (Eastern Time), on the date specified in Section A5.1 (the "Proposal Due Date").

A6.0 CONFLICT OF INTEREST

Federal regulations prohibit the hiring of any person or organization that has a "conflict of interest". Because of their prior work, the following firms have been identified as having conflicts of interest that prevent their consideration for the pending Project. Due to a conflict of interest based on services currently being provided that are related to this Project, Proposers may not include the services of the following firm(s):

- Parsons Transportation Group of New York, Inc.
- AKRF, Inc.
- C&S Engineers Inc.
- Popli Design Group
- Trowbridge Wolf Michaels Landscape Architects (TRM)
- Environmental Design and Research (EDR)
- Watts Architecture and Engineering
- T2 Engineering (formerly ES NY)
- KCI Engineering of New York, P.C.

Proposers utilizing firm(s) identified above will be disqualified from participating in this Project.

A7.0 PARTICIPATION GOALS

Refer to Part 1.

A8.0 DEPARTMENT'S DESIGNATED REPRESENTATIVE

The Department's Designated Representative for this Procurement is:

Chris Nebral

FORM SA
STIPEND AGREEMENT

COMPTROLLER'S CONTRACT NO.:

PIN: 3501.91

PROJECT: Stipend Agreement for the Preparation & Submission of the Design Build Proposal for I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 2

This Agreement made this ____ day of _____, 20____, by and between NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter "NYSDOT"), whose principal office is located at 50 Wolf Rd., Albany, New York 12232, and _____, duly organized and existing under the laws of the State of New York, having its principal office at _____ (hereinafter referred to as "Proposer").

WITNESSETH:

WHEREAS, NYSDOT is currently procuring a design-build contract (the "Contract") for the _____ Project (the "Project");

WHEREAS, the Proposer submitted a proposal ("the Proposal") in response to the Request for Proposals issued by NYSDOT on _____, as amended by any addenda (as amended, the "RFP");

WHEREAS, the Proposal met the criteria set forth in Article 4(A) of this Stipend Agreement; and

WHEREAS, the Department has not awarded the Contract to the Proposer.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT. The Agreement consists of the following in the following descending order of precedence:

- Appendix A – New York State Required Contract Provisions
- Appendix A-1 – Supplemental Title VI Provisions and Appendix B – Requirements for Federally-Aided Transportation Projects
- Agreement Form – this document titled "Stipend Agreement"
- Attachment 1 to Stipend Agreement

ARTICLE 2. WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS. The term "Work Product" shall mean ideas or information, and the expression of ideas or information, included in the Proposal or otherwise submitted or communicated in any manner by or on behalf of the Proposer to NYSDOT during the Project's procurement process at any time

prior to the awarding of the Contract. Work Product does not include any sensitive and confidential financial information regarding the Proposer that was included in the Proposal.

ARTICLE 3. NYSDOT'S RIGHTS TO WORK PRODUCT. Under the terms of this Agreement, NYSDOT may use the Work Product for the purposes of the Project or any future project pursued by NYSDOT without any obligation to pay any additional compensation to the Proposer.

With respect to any Work Product that incorporates intellectual property owned or developed by the Proposer, the Proposer's team members or other third parties, the Proposer represents and warrants that it has the right to grant NYSDOT irrevocable, non-exclusive, perpetual, royalty-free licenses to use such intellectual property for the purposes specified herein. As of the date of this Agreement, the Proposer hereby assigns such licenses to NYSDOT, and agrees to indemnify, defend, and hold harmless NYSDOT and the State of New York from any and all claims, costs, expenses, and damages of every kind resulting from infringement allegations related to NYSDOT's exercise of the intellectual property rights granted herein.

The foregoing shall not be deemed a requirement for the Proposer to provide off-the-shelf software to NYSDOT.

ARTICLE 4. PROVISION FOR PAYMENT.

A) The Stipend will be paid by NYSDOT to the Proposer only under the circumstances specified in this Article 4. The Proposer will not be entitled to payment of any Stipend Amount if the Proposal fails to:

- 1) Achieve a rating of "pass" on all Pass/Fail Evaluation Factors found in the RFP for the Project; or
- 2) Meet or exceed the minimum qualifying quality based evaluation threshold as required in the RFP.

B) The Proposer will not be entitled to payment of any Stipend Amount if the Proposer has filed an unsuccessful protest of the procurement process, award or cancellation of the procurement. In addition, as a condition of accepting payment of any Stipend Amount, the Proposer agrees to not file any protest of the procurement process, award, or cancellation of the procurement after accepting payment of the Stipend.

C) The Proposer will not be entitled to payment of any Stipend Amount if the Proposer fails to submit an invoice in accordance with 4(D), below, or fails to provide satisfactory evidence substantiating its Qualified Costs (as defined in 4(E), below) in accordance with (D), below.

D) In order to receive payment of the Stipend Amount, the Proposer shall submit to NYSDOT: two signed originals of Attachment 1 of this Stipend Agreement, two copies of a single invoice for its proposed Stipend Amount, and two copies of all documentation required under (E), below, not later than 20 calendar days after the Proposal Due Date. If NYSDOT disagrees with the proposed Stipend Amount set forth in the Proposer's initial invoice, NYSDOT will notify the Proposer in writing of its determination of the appropriate Stipend Amount based on its review of the Proposer's substantiated costs, and the Proposer shall submit a revised invoice to NYSDOT within 14 days following receipt of any such notice.

E) The Proposer shall maintain written records substantiating all Qualified Costs in sufficient detail to permit a proper audit thereof. Such records shall be made available for audit or verification of Qualified Costs upon request of NYSDOT at the time of this Agreement and for three years after final payment of the Stipend Amount is made. "Qualified Costs" shall comprise the direct costs and overhead costs that are allowable and reasonable, and incurred by the Proposer, the Proposer's team, or third-parties acting at the direction of the Proposer in the production of the Work Product. Examples of qualified costs (subject to limitations of any other contract stipulations such as limits on hourly rates or not to exceed Government travel rates) can include the following:

- A) Compensation of employee's time charges related to preparation of the Proposal;
- B) Cost of materials acquired, consumed, or expended related to preparation of the Proposal;
- C) Cost of equipment utilized related to preparation of the Proposal; and
- D) Travel expenses incurred related to preparation of the Proposal.

The overhead rate applied to the Stipend calculation shall be equal to the Proposer's current audited rate on file with the NYSDOT. An overhead rate of 115% will be applied for firms with no current rate on file. Unallowable Proposer costs are described in CFR-2011 - title 48 – volume 1 - part 31 – subpart 31.6. The Proposer shall submit to NYSDOT copies of all substantiating documentation of Qualified Costs concurrently with the submission of its invoice for the Stipend Amount, and at any other time upon NYSDOT's request. Failure of the Proposer, the Proposer's team, or third-parties acting at the direction of the Proposer to maintain and retain sufficient records to allow audit or verification of Qualified Costs, or failure to allow NYSDOT or its agents access to the same, shall constitute a waiver of the right to any payment of a Stipend, and any Stipend Amount paid to the Proposer under this Agreement shall be immediately returned to the NYSDOT.

F) The Proposer must execute this Stipend Agreement and provide NYSDOT with the licenses required by Article 3 no later than 20 calendar days after the Proposal Due Date. Extensions may be granted at the sole discretion of NYSDOT.

G) A failure by any Proposer to comply with Article 4(F) constitutes a waiver to the right to any payment of a Stipend

H) Subject to the requirements and limitations set forth herein, NYSDOT shall pay to the Proposer, and the Proposer agrees to accept as full compensation for its Work Product, an amount (the "Stipend Amount") equal to 50% of the Proposer's total Qualified Costs, as substantiated in accordance with (D) & (E), above, not to exceed ~~\$650,000~~\$450,000.

ARTICLE 5. PAYMENT OF STIPEND AND WAIVER OF CLAIMS.

A) The Proposer is required, if it is a foreign or out of state corporation or entity, to obtain and submit the required tax clearance certificate to NYSDOT to enable the processing of the payment of the Stipend Amount. It should be noted that any time taken to satisfy or furnish this tax clearance certificate shall extend any required payment date by an equal period of time.

B) Acceptance by the Proposer of payment of the Stipend Amount from NYSDOT shall constitute a waiver by the Proposer of any and all rights, equitable or otherwise, to bring any claim or protest against either of NYSDOT or the State of New York, or any of their officers, directors, agents, employees, representatives or advisers and their successors and assigns, in

connection with the procurement of the Project, including, without limitation, the procurement process, any award of the Contract or any cancellation of the procurement.

ARTICLE 6. NYSDOT'S PROJECT MANAGER. The following person, or his/her successor, is NYSDOT's Project Manager:

Name: Jeff Moryl
Title: Project Manager
Address: 50 Wolf Road, 6th Floor, Albany, NY 12232
Phone: 518-457-4722
Email: Jeff.Moryl@dot.ny.gov

ARTICLE 7. PROPOSER'S PERSONNEL. The following person, or his/her successor, is the Proposer's Authorized Representative:

Name:
Address:
Phone:
Email:

ARTICLE 8. NEW YORK STATE FINANCE LAW §§ 139-J AND 139-K CERTIFICATION. By execution of this Agreement, the Proposer certifies that all information the Proposer has provided to NYSDOT with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate. NYSDOT shall have the right to terminate this Agreement if NYSDOT finds that the certification made by Proposer in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete.

ARTICLE 9. MISCELLANEOUS TERMS.

A) All of the Proposer's team members and subcontractors shall be bound by the same provisions of this Agreement as the Proposer. All agreements between the Proposer, Proposer's team members, and/or subcontractors shall include provisions effectuating this term, and all such agreements shall be subject to review by NYSDOT.

B) Proposer may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of NYSDOT.

C) Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties that executed and approved this Agreement, or their successors.

D) If NYSDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or NYSDOT's right to subsequently enforce it.

E) New York law, without regard to its choice-of-law provisions, governs the validity, interpretation, and enforcement of this Agreement.

F) This Agreement contains all prior negotiations and agreements between the parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

G) All confidentiality provisions of the RFP shall continue to apply to the Proposer.

ARTICLE 10. POWER TO EXECUTE AGREEMENT

The undersigned representative of the Proposer certifies that he or she has full and complete authority to bind the Proposer, the Proposer's team members, and subcontractors to

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all terms and conditions of this Agreement, and that by executing the Agreement does so bind such entities.

IN WITNESS WHEREOF, this Contract No. D9000564 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the PROPOSER has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY

FOR THE PEOPLE OF THE STATE OF NEW YORK

By _____

NYSDOT CONTRACT MANAGEMENT

DEPARTMENT OF TRANSPORTATION

DATE: _____

DATE: _____

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Laws 139j & 139k is complete, true and accurate.

By: _____
(ENTER FIRM NAME BELOW LINE,
AUTHORIZED SIGNATURE ABOVE)

Date: _____

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI
STATE COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____

Acknowledgement for Contract # _____

For contracts signed in New York State

State of New York)

County of) ss.:

On the ____ day of _____ in the year 201_, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

My Commission Expires: _____

New York State Department of Transportation

For contracts signed **outside** New York State

State of _____)

County of _____) ss.:

On the _____ day of _____ in the year 201____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in

_____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

NOTARY PUBLIC

(Signature and office of individual taking acknowledgement.)

Commission Expires:

ATTACHMENT 1 TO STIPEND AGREEMENT D

CERTIFICATION BY PROPOSER

I, _____, do hereby certify that I am the _____ of _____, for the work referred to in the forgoing payment request, that I am the person in whose name the foregoing account against the State of New York is rendered, that the labor, materials, expenses or services charged for were actually delivered, incurred or rendered, as named heretofore, and that the prices charged are just and reasonable; that no percentage or compensation has been paid or promised to be paid to any manager, trustee, officer or employee of said institution, department, board or commission, by reason of the claimant having been allowed to sell to, incur expense for, or render services to, said institution; and also, that to the best of my knowledge and belief, no manager, trustee, officer or employee of said institution, department, board or commission has, or has had, any interest directly or indirectly in said articles, materials, expenses or services; and that no part of the foregoing account has been paid, and that the above statement is true and correct.

(Date)

(Signature)

CERTIFICATION BY DEPARTMENT

I, _____ (name), do hereby certify that I am the _____ (title) employed in the supervision of the work described in the attached Payment Request; that the materials, labor and services have been furnished and the work properly performed in accordance with the contract; and that payment in the sum of \$_____ can be made on this contract without detriment to the interests of the State, to the best of my knowledge and belief.

(Date)

(Signature)